Docket #0025 Date Filed: 6/23/2016

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Debtors.	Chapter 11 Cases 14-40987-MSH 14-40988-MSH 14-40989-MSH Jointly Administered
STEPHEN DARR, AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF EACH OF THE DEBTORS, Plaintiff, v. ADVENT COMMUNICATIONS CORPORATION, Defendant.	Adversary Proceeding No. 16-4026

MOTION BY THE TRUSTEE TO STAY PROCEEDINGS IN THE ABOVE-CAPTIONED ADVERSARY PROCEEDING PENDING RESOLUTION OF THE CRIMINAL ACTION AGAINST JAMES MERRILL

Stephen B. Darr, as he is Trustee (the "Trustee") of the Chapter 11 Estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors"), moves that this Court enter an order staying any further proceedings in the above-captioned Adversary Proceeding (the "Adversary Proceeding") pending a resolution of the Criminal Action brought by The United States of America against James Merrill and another,[1] captioned *United States v. Merrill*, 14-CR-40028-TSH (the "Criminal Action"). The Criminal Action is currently scheduled for trial in the fall of 2016. The Trustee seeks this stay at the request of the United

[1] The other defendant is Carlos Wanzeler, who is currently a fugitive living in Brazil, and he has not appeared in the Criminal Action.

States so as not to interfere with the proper administration and prosecution of the Criminal Action. As further set forth herein, the exchange of initial disclosures by the parties under Rule 26(f) has provided information that continued pursuit of this proceeding might implicate the Criminal Action.

In further support of his motion, the Trustee states as follows:

1. The Adversary Proceeding arises from the TelexFree Ponzi scheme that was perpetrated on thousands of mostly working class investors, domestic and worldwide, by James Merrill and Carlos Wanzeler and assisted by various individuals including those named in the Adversary Proceeding.

2. James Merrill and Carlos Wanzeler have been indicted by the United States Government and the Criminal Action against Mr. Merrill, as noted, is scheduled for trial in the fall of this year. Mr. Wanzeler is currently a fugitive living in Brazil, and his case has not been scheduled for trial. The Trustee was required to commence the Adversary Proceeding before the Criminal Action could be resolved because the expiration of the Statute of Limitation relevant to these actions was approaching and was clearly going to expire before the Criminal Action was resolved. However, in commencing these actions, the Trustee does not intend to interfere with the proper administration of the Criminal Actions nor prejudice the Government's prosecution of those actions.

3. Potentially, areas of interference or prejudice would be to permit the targets of the Criminal Action to use the Adversary Proceeding to conduct discovery, which could result in the premature and broad disclosure of the essentials of the Government's case in chief, allowing the defense to tailor its presentation to meet that anticipated proof. Additionally, the use of

discovery in the Adversary Proceeding could be used to harass or intimidate potential witnesses for the Government, some of whom are also named as Defendants in the Adversary Proceeding.

4. In considering the appropriateness of granting a stay, the courts generally consider certain factors, including (a) the extent to which the civil and criminal cases overlap; (b) the public interest; (c) any potential prejudice to the civil parties if the matter is stayed; (d) the court's interest in managing the docket and resources; and (e) the current status of the criminal case. *See United States v. Mellon Bank*, 545 F.2d 869, 872-873 (3rd Cir. 1976); and *Micro Financial, Inc. v. Premier Holidays Int'l*, 385 F.3d 72, 77 (1st Cir 2004).

5. Consideration of each of these factors weights in favor of granting the stay. In particular, the degree to which the issues in the Adversary Proceeding overlap those in the Criminal Action.

6. Both the Adversary Proceeding and the Criminal Action rest upon the same basic factual allegations that James Merrill and Carlos Wanzeler, through the vehicle of TelexFree, created a pyramid/Ponzi scheme, pursuant to which they defrauded thousands of individuals for millions of dollars. In such situations the stay is ordinarily granted. *One 1964 Cadillac DeVille*, 41 F.R.D. 352, 353 (S.D.N.Y. 1966).

7. While there is substantial potential for harm to be done to the prosecution of the Criminal Action, there is little prejudice to the Defendants in the Adversary Proceeding if the stay is granted. The Criminal Action is scheduled for trial this fall; therefore, it is anticipated the stay will be short lived. Further, the stay will not inhibit the parties in the Adversary Proceeding to continue any discussions towards a resolution of the various claims.

8. On or about June 3, 2016, the parties submitted their Rule 26(f) certification of having conferred, and the Court entered a modified pre-trial order. On or about June 10, 2016,

the parties exchanged initial discovery. It became evident from a review of potential witnesses identified in the initial disclosures that the continued pursuit of this adversary proceeding might implicate the Criminal Action. Based upon this information, the Trustee, after consultation with federal authorities, requests a stay of this action. The Defendant has indicated that it has no objection.

WHEREFORE, Stephen B. Darr, as he is the Trustee of the Chapter 11 Estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc., respectfully prays that his motion be allowed and that this Court enter an order staying the Adversary Proceeding pending the earlier of the resolution of the Criminal Action or December 1, 2016; and for such other and further relief as this Court deems just and proper.

STEPHEN B. DARR AS HE IS TRUSTEE OF THE CHAPTER 11 ESTATES OF TELEXFREE, LLC, TELEXFREE, INC. AND TELEXFREE FINANCIAL, INC.

By his attorneys,
MURPHY & KING
PROFESSIONAL CORPORATION

/s/ Andrew G. Lizotte

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Dated: June 23, 2016
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CERTIFICATE OF SERVICE

I, Andrew G. Lizotte, hereby certify that I have this day, caused to be served a copy of the *Motion by the Trustee to Stay Proceedings in the Above-Captioned Adversary Proceeding Resolution of the Criminal Action Against James Merrill* by this Court's CM/ECF System and/or by First Class Mail, postage prepaid to the following:

Advent Communications Corporation
c/o John Diamond, Esq.
Vernon C. Jolley, Esq.
Jolley & Jolley
37 West 9000 Sought
Sandy, UT 84070

/s/ Andrew G. Lizotte
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DATED: June 23, 2016
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